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In the Supreme Court of the United States

OCTOBER TERM, 1975

MARY MULLIGAN, an individual, et al.,
Petitioners,

vs.

GEORGE W. DUNNE, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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SORG/CHICAGO U.S.A.

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Petitioners, Mary Mulligan, et al., Appellants in the Court below, pray that a Writ of Certiorari be issued to review the judgment of the Supreme Court of Illinois entered in this case.

OPINION BELOW

The opinion of the Supreme Court of Illinois, reported at 61 Ill. 2d 544, 338 N.E.2d 6 (1975), is appended as Appendix A. (App. 1-15.)

JURISDICTION

The opinion and judgment of the Supreme Court of Illinois were entered on September 26, 1975 and a petition for rehearing was denied on November 21, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

Section 6(a) of Article VII of the Illinois Constitution of 1970 provides that voters in all Illinois counties except Cook County may elect whether or not to have home rule status, which status grants counties well nigh unlimited powers to tax, to incur debt, and to regulate the public health, safety and morals. Cook County is automatically made a home rule unit, thereby denying such a right to vote to its citizens.

The question presented is whether this discrimination against the voters of Cook County violates their right to vote as guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in part:

> ". . . nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

This case arises from the enactment of a liquor tax ordinance by the Board of Commissioners of Cook County, Illinois on May 5, 1975 under its claimed home rule powers. In this case, the Cook County liquor taxing ordinance could not have been imposed unless Cook County was a home rule unit. (Appendix A at pp. 3-7).

The constitutionality of the tax was challenged in the Circuit Court of Cook County, Illinois by petitioners who are judicially certified classes. One class consists of residents, taxpayers and registered voters of Cook County who purchase and desire to purchase alcoholic beverages at retail within Cook County. Other classes include members of the alcoholic beverage industry from throughout the State of Illinois including distillers, vinters, brewers, distributors and retail dealers. Respondents are the Cook County taxing officials including George W. Dunne, President of the Cook County Board of Commissioners.

The 1970 Illinois Constitution mandated that Cook County, Illinois would be a home rule unit but permitted the voters in the other 101 Illinois counties to determine by referendum whether their counties would become home rule units. 1970 Ill. Const. Art. VII, § 6(a). The home rule powers and limitations as prescribed by the 1970 Illinois Constitution are set forth in Appendix B.

Home rule status gives Cook County general governmental powers unavailable to a non home rule county including almost unlimited power to tax, to incur debt and to regulate the public health, safety and morals. 1970 Ill. Const. Art. VII, § 6(a). Moreover, the Illinois Supreme Court has consistently held that exercises of home rule powers supersede existing Illinois state law on the subject insofar as the home rule unit is concerned. See, e.g., *Kan-*

ellos v. *County of Cook,* 53 Ill. 2d 161, 290 N.E.2d 240 (1972); *People ex rel. Hanrahan* v. *Beck,* 54 Ill. 2d 561, 301 N.E.2d 281 (1973). Since the new Constitution reqquires an extraordinary majority of three-fifths of the Illinois General Assembly to pass laws overturning, *inter alia,* home rule powers to tax, Cook County officials possess virtually unfettered power. 1970 Ill. Const. Art. VII § 6.

Home rule status for Cook County has resulted in a drastic increase in the powers of the County over Cook County residents and without their having a right to vote on this issue. Since the effective date of the 1970 Illinois Constitution the voters of eight other Illinois counties have considered adopting home rule status for their counties and in all eight counties they overwhelmingly rejected it.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW RAISES A SUBSTANTIAL FEDERAL QUESTION AND IS IN CONFLICT WITH THE RATIONALE OF THE DECISIONS OF THIS COURT.

The opinion below is inconsistent with this Court's interpretation of the Constitution. This Court has consistently held that in cases involving a fundamental right such as the franchise:

> "[I]f a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest." *Kramer* v. *Union Free School District,* 395 U.S. 621, 627 (1969).

See also *Dunn* v. *Blumstein,* 405 U.S. 330, 337 (1972). In *Hill* v. *Stone,* 421 U.S. 289, 297 (1975), this Court reiterated the standard enunciated in *Kramer:*

> "The basic principle expressed in these cases is that so long as the election in question is not one of special interest, any classification restricting the franchise on grounds other than residence, age, and citizenship cannot stand unless the district or State can demonstrate that the classification serves a compelling state interest. See *Kramer, supra,* 395 U.S., at 626, 627, 89 S.Ct. at 1889; *Cipriano, supra,* 395 U.S., at 704, 89 S.Ct. 1899."

Respondents have never attempted to demonstrate a compelling state interest for denying Cook County voters the franchise while granting it to the Illinois voters outside Cook County. The Court below did not deal with what, if

any, "compelling state interest" is served by the Ordinance (indeed the phrase "compelling state interest" does not appear in its Opinion*) and appears to have based its decision on the population and industrial concentration in Cook County in contrast to the other 101 Illinois counties. (Appendix A at 12.) Such a basis for distinguishing Cook from other Illinois counties, while perhaps appropriate when suspect classifications or fundamental rights are not involved, does not rise to the level of a compelling state interest so as to justify depriving Cook County citizens of the right to vote granted citizens of all other Illinois counties under Section 6 of Article VII of the 1970 Illinois Constitution.

As pointed out above, the Cook County home rule powers have been held to supersede prior state laws enacted by the General Assembly. (Appendix A at 3-7.) Further, for state statutory law to overturn an exercise of home rule powers (such as the liquor ordinance at issue here) requires such a law to be enacted by an extraordinary majority of three-fifths of the General Assembly. 1970 Ill. Const. Art. VII, § 6(g). Consequently, the practical effect of many home rule ordinances is that they either contradict or materially interfere with a statewide scheme of control, such as the Illinois Liquor Control Act, 43 Ill. Rev. Stat. §§ 94 *et seq.*, to the detriment of the constituents of the home rule entity. This, undoubtedly, is one reason why whenever Illinois voters have been given the choice to vote on the question of whether to bring home rule powers to their counties they have voted "No". But, again, only Cook County voters have been denied the right to vote on home rule which threatens them with deprivation of the protection of statewide laws of uniform application enacted by the majority of the

* The failure to apply the "compelling state interest" may have occurred because the court below followed the mistaken notion of defendants that all that was required was some sort of rational or reasonable basis. Plaintiffs did their best to dispel this erroneous notion. See Appendix C pp. 19-21.

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General Assembly. Compare *Moore* v. *Ogilvie*, 394 U.S. 814 (1969).*

The issue raised herein is one of continuing federal importance because it concerns the question of whether state

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* The Illinois Constitution was approved at a general statewide referendum which included Cook County. (Appendix A at 12.) However, this referendum did not affect the deprivation of the right to vote issue involved in this case because all non-Cook County voters are given the right to vote separately on the home rule issue. *Lucas* v. *Colorado General Assembly*, 377 U.S. 713, 736 (1964). Further, the fact that Cook County voters can divest themselves of home rule by initiating a referendum does not cure the problem (Appendix A at 12-13) because there are significantly higher burdens placed on those seeking a referendum to discontinue home rule than on those seeking a referendum to adopt home rule.

While a referendum on adopting home rule may be obtained by a petition signed by two per cent or 500 of the registered voters in the county, *whichever is less*, a referendum on discontinuing home rule can be obtained only by a petition signed by five per cent of the registered voters of the county who voted in the last regular election held in the county at which county officers were elected. County Executive Act, 34 Ill. Rev. Stat. §§ 705, 714.

Since, however, the County Executive Act specifically excludes Cook County from its provisions (34 Ill. Rev. Stat. §§ 701 *et seq.*), a discontinuance referendum in Cook County is governed by Section 28—4 of the Illinois Election Code. (46 Ill. Rev. Stat. §§ 1—1 *et seq.*) That section provides that voters seeking a discontinuance referendum on home rule can do so only by obtaining petitions "signed by a number of qualified electors equal to or greater than 10% of the number who voted in the last general election in the governmental unit. . . ."

These are not, as the Illinois Supreme Court stated, "minor variances" (Appendix A at 13). Translated into the number of signatures required to obtain a referendum the variations become highly significant. While a referendum may be obtained on adopting home rule with 500 or, indeed, in some counties, even fewer signatures, a Cook County voter desiring a referendum on discontinuance of home rule must presently obtain 143,892 signatures on a petition seeking the referendum. (Based on 1,438,906 applications for ballot in the November 5, 1974 election, the last regular election held in Cook County.)

procedures for adopting new forms of local government must treat all voters equally under the Fourteenth Amendment. For example, in *Citizens for Community Action* v. *Ghezzi,* 386 F. Supp. 1 (Three Judge Dist. Ct., W.D.N.Y. 1974), the Court applied the standard urged here and consistently employed by this Court to invalidate a procedure for adopting home rule status, whereas the court below did not apply the standard.

This Court has not ruled on this important constitutional question. It is, however, of great importance to the conduct of local government throughout the United States and requires resolution by this Court.

CONCLUSION.

Petitioners pray that this Court issue its Writ of Certiorari to the Supreme Court of Illinois to review the substantial federal questions raised herein.

Respectfully submitted,

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